IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 207 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAMNALAL VAIKUNTHRAM

Versus

GSRTC

Appearance:

1. First Appeal No. 207 of 1983

MR JITENDRA M PATEL for Appellant No. 1

NOTICE SERVED for Respondent No. 1-2

MR RAJNI H MEHTA for Respondent No. 3

RULE UNSERVED for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/09/2001

ORAL JUDGEMENT

1. The present appellant - original applicant of MACP NO.387 of 1980 has preferred the present appeal for

enhancement of compensation for the injuries sustained by him in the vehicular accident and also for enhancement of rate of interest from 6% to 9%, against the judgement and order dtd.30/4/1982 passed by the Motor Accident Claims Tribunal, Mehsana partly allowing the said MACP.

2. In this matter, this Court has issued notice to the respondents, but the respondent Nos. 1 and 2 have chosen not to appear either personally or through advocate. The respondent NO.3 has appeared through learned counsel Mr.Rajani H. Mehta and the respondent No.4, on service of notice once appeared and thereafter he has chosen not to appear either personally or through advocate before this court.

3. Brief facts of the case are as under:-
The appellant was travelling in a ST Bus belonging to the respondent No.1 - GSRTC from Ahmedabad to Deesa bearing registration No.GRT 6529 (hereinafter referred to as "the Gujarat Bus") known as Ahmedabad Tharad Bus on 27/8/1980 driven by the respondent No.2. When the said bus reached near Bhandu Bus-stand, RSRTC Bus bearing Registration No.RSB-4130 (hereinafter referred to as "the Rajasthan Bus"), was abruptly stopped by the respondent No.4 unexpectedly and without giving any signal and, therefore, the respondent No.2 could not control the Gujarat Bus, as a result of which the front portion of Gujarat Bus dashed with the back portion of the Rajasthan Bus, and hence some of the passengers travelling in the Gujarat Bus received injuries. The appellant was also one of the passengers who also received serious injuries on his left hand, chest, head and on hip portion, which ultimately resulted into permanent partial disability. He was immediately taken to Mehsana Civil Hospital for treatment. Immediately after the preliminary treatment, looking to the seriousness of the injuries, he was shifted to the Ahmedabad Civil Hospital where he was admitted as indoor patient from 28/8/1980 to 7/9/1980. Thereafter, he was discharged with the plaster bandage with specific advice to keep plaster bandage for 7 days from the date of discharge, with a further advice that he should remain bedridden for a further period of eight weeks. Thereafter the plaster bandage was removed and again he was shifted to Ahmedabad and taken treatment for a period of 12 days as an indoor patient. Thereafter also he remained under plaster for a period of 22 days. In short, he has taken treatment as an indoor patient for a period of three months. According to the appellant as the left hand bone and left shoulder bone got broken he is unable to do any work with the left hand. According

to the appellant because of the fracture of the hip bone, he is unable to move properly and also suffered fractures of the ribs and that made him unable to do any work of labour. It is the case of the appellant that at the time of accident, he was running Canteen in the premises of Agricultural Produce Committee at Deesa and was running the said canteen since six years prior to the date of claim petition. According to the appellant, he himself used to supervise the work of conducting the canteen and was also doing the work of empty gunny bags in partnership with others. The appellant claimed that he used to earn about Rs.1500/- per month but because of the accident, he would not be in a position to do any work and he is entitled to compensation on the count of future loss because of the disability incurred by him. It is further case of the appellant, that tender for canteen for further period was not accepted by the authority considering the disability of the appellant, and thereby he had to suffer economic loss on account of the disability received in the vehicular accident in question. Therefore, the appellant filed claim petition claiming compensation of Rs.1,00,000/- before the Motor Accident Claims Tribunal, Mehsana under different heads.

4. When the petition came up for hearing before the Tribunal, the appellant has examined himself at Ex.36, Dr.R.N. Patel, Medical Officer, Civil Hospital, Mehsana at Ex.98, Dr. Govindbhai K. Aggraval at Ex.104 who is an Orthopaedic Surgeon and who has assessed permanent partial disability, one Jalamchand Mulchand at Ex.114, and Dr.L.R. Gohil of Civil Hospital, Ahmedabad for proving his injury and treatment.

5. On the other hand, respondent Nos.1 and 2 filed their reply at Ex.25, and respondent Nos.3 and 4 filed their reply at Ex.30 in the tribunal inter alia denying the averments made in the claim petition and resisting the claim petition and also examined one Mr.Natvarlal Ambalal Parmar respondent No.2.

6. After hearing the learned advocates for the respective parties, and considering the evidence on record, the learned Tribunal passed the impugned judgement awarding compensation of Rs.44,000/- along with proportionate costs and interest at the rate of 6% from the date of application till payment.

7. Against the aforesaid judgement, the appellant has preferred this appeal and has prayed for enhancement of the amount of compensation and for enhancement of interest at the rate of 3% pursuant to the decision of

the Hon'ble Supreme Court.

8. I have heard the learned counsel Mr.J.M. Patel for the appellant and the learned counsel Mr.R.H. Mehta for the respondent No.3.

9. The learned counsel for the appellant has taken me through the judgement as well as oral and documentary evidence on record. He has drawn my attention towards the injury certificate issued by the Civil Hospital, Ahmedabad which has been proved wide Ex.118 and proved by Dr.LR Gohil Ex.117. He has further drawn my attention to the Ex.88 issued by the Surgeon G.K. Upadhyay, wherein he has assessed 25% permanent partial disability. Showing me documentary as well as oral evidence, he has further submitted that at the relevant time, the appellant was running Canteen in Deesa Marketing Yard and on account of the disability, the authority had not extended the contract for further period and hence the appellant has suffered a loss of Rs.8000/- per annum. He has further submitted that disability is required to be linked with the nature of the work performed by the appellant at the relevant time. He has further submitted that the tribunal ought to have accepted disability to the extent of 25% as per the disability certificate Ex.88 for the purpose of assessing future economic loss. He has further submitted that though the appellant has proved his income, the learned tribunal has assessed yearly income of Rs.15,000/- only and at the time of assessing future economic loss, the tribunal has wrongly deducted Rs.5000/- from the yearly income of the appellant. He has further submitted that the tribunal has only considered 7% disability for the purpose of assessing future economic loss. He has further submitted that the appellant has taken treatment at various places like Civil Hospital, Mehsana, Civil Hospital, Ahmedabad, Amar Trivedi Nursing Home, Ahmedabad and Dr.Trivedi's Hospital at Ahmedabad and the appellant had to remain bed ridden for a period of more than 4 months and further argued that considering the long span of treatment, permanent partial disability, the tribunal ought to have awarded more amount towards pain, shock and suffering. Submitting accordingly, the learned counsel for the appellant has submitted that though the appellant is entitled to more amount, the appellant has restricted his claim for enhancement of only Rs.20,000/- with 9% interest i.e. enhancement of 3% more interest.

10. The learned counsel for the appellant has submitted that looking to the facts and circumstances of the case, 9% interest is required to be granted. In

short the appellant has prayed for enhancement of 3% more interest.

11. On the other hand learned counsel for the respondent NO.3 has argued that the disability which has been sustained by the appellant and certified by the concerned Doctor is a disability of a particular limb and in the circumstances while deciding future economic loss, it is required to be considered accordingly.

12. The appellant in his deposition at Ex.36 has stated that on account of the vehicular accident, the appellant has suffered multiple injuries including the fracture on left hand, and for the said injuries, the appellant was initially taken to Mehsana Civil Hospital, from where the appellant was shifted to Ahmedabad Civil Hospital for further treatment where he was admitted as indoor patient from 7/9/1980 with an advice that he should come after 8 weeks for removing plaster bandage and also with a further advice to take bed-rest for four weeks. The appellant has taken treatment for a period of about six months and he remained bedridden for a period of 3 months, and during this period, he has taken treatment from various hospitals.

On account of the vehicular accident, the appellant received the following injuries as per the evidence of Dr.GK Aggrawal Ex.104 :--

1. Complaint of deformity of left arm.
2. Weakness of left arm and complaint of limitation of shoulder movements.
3. Bony Swelling at Mid-shaft of left humereous.
4. Abnormal monility at mid arm.
5. active shoulder movement restricted in abduction and flexion.
6. Power of elbow movement was weak.
7. Shortening of left arm by 1/2".

13. On account of the injuries sustained in the vehicular accident, the appellant has sustained 25% permanent partial disability and keeping in mind his nature of work which he was doing and the permanent partial disability, for the purpose of considering the future economic loss, half of the disability i.e. 12.5% is required to be considered as a permanent partial disability, and accordingly the future economic loss would come to Rs.28,128/-, with multiple of 15 which has been adopted by the Tribunal. The tribunal has awarded Rs.10,000/-- towards the pain, shock and suffering, but considering the long span of the medical treatment taken

by the appellant considering the nature of the injuries, the said amount is required to be enhanced upto 20,000/-and same is accordingly enhanced considering the facts and circumstances of the case and further considering the fact that the left hand of the appellant in the middle of the humerus bond is practically hanging and the left hand is completely useless. There were three fractures on 7th, 8th and 9th ribs on left side of the appellant, and on account of the fractures the appellant had to remain under plaster for a long time.

However, it is pertinent to note that the learned counsel for the appellant has restricted his claimed for enhancement of only Rs.20,000/-- and enhancement of 3% interest. In my opinion, considering the nature of injuries sustained by the appellant, long span of medical treatment which the appellant has taken from various hospitals, and period of hospitalization and bedridden, medical expenses, pain, shock and suffering which the appellant has suffered and which may suffer in future also, attendance charges, special diets, future economic loss, and further considering the 25% permanent partial disability which directly affects the functional ability of the appellant, the additional compensation of Rs.20,000/- being a meager amount as prayed by the learned counsel for the appellant is required to be enhanced without awarding the said enhanced amount under different heads and then and then the ends of justice would be met.

Hence considering the facts and circumstances of the case, I award additional compensation of Rs.20,000/-without dividing the same into different heads.

14. So far as 9% rate of interest is concerned, the Supreme Court in the case of Smt.Kaushnuma Begam and ors. Vs. The New India Assurance Co.Ltd. and ors. reported in Supreme Today 2000(1) Supreme page 5, in para 24 has held as under ;-

"Now we have to fix up the rate of interest. Section 171 of the M.V.Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf." Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India the interest rate has been lowered.

> The nationalized banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinabove shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs.50,000/- paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date.

15. Learned counsel for the respondent NO.3 has no objection for awarding 9% interest pursuant to the aforesaid decision and hence the rate of interests is hereby enhanced and awarded to 9% on the aforesaid awarded amount.

16. The respondents are hereby directed to deposit the aforesaid enhanced amount of Rs.20,000/- towards the compensation along with interest at the rate of 9% in the trial court. Except the above modification, rest of the order of the trial court will remain intact. On depositing the said amount in the tribunal, the tribunal is directed to pass appropriate order for disbursement of the said amount in accordance with the principles laid down by this Court in General Manager Kerala State Road Transport Corporation Vs. Sasamma Thomas & Ors.

17. In view of the above observations and directions, the appeal is disposed of accordingly.

(R.P. DHOLAKIA, J.)

Rafik